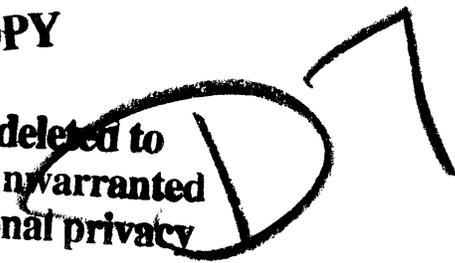


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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

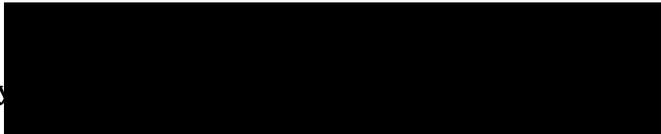


**U.S. Citizenship  
and Immigration  
Services**



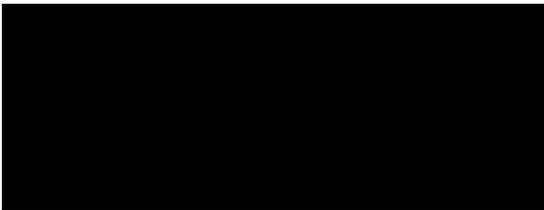
File: SRC 02 136 50778      Office: TEXAS SERVICE CENTER      Date: **MAR 25 2004**

ON RE : Petitioner:  
Beneficiary

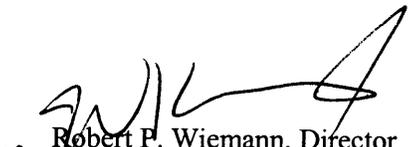


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the  
Immigration and      Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a limited liability company that specializes in the import and export of industrial equipment and accessories and automobile parts. It seeks to employ the beneficiary in the United States as its manager of operations. The director determined that the petitioner had not established that a qualifying relationship exists between the United States firm and a qualifying foreign entity.

On appeal, counsel states that the beneficiary owns 100% of a company named Wambil Enterprises Company Limited located in the Commonwealth of The Bahamas because he owns 4,996 of the 5,000 outstanding shares of stock of that company. Counsel further states that the remaining four shares of stock are held in trust for the beneficiary by John Bastian, Mark Stubbs, Henry Knowles and Timothy Sawyer. Counsel submits stock certificate number 1 showing that share number 1 was issued to the beneficiary. Counsel also submits stock certificate number 7 showing that shares number 6 to 5,000 were issued to the beneficiary on January 4, 2001. Counsel forwards stock certificate number 2 showing that share number 2 was issued to John Bastian, certificate number 4 showing that share number 4 was issued to Henry Knowles, and certificate number 5 showing that share number 5 was issued to Timothy Sawyer. Certificates numbered 1, 2, 4, and 5 were issued on June 10, 1981. Counsel also forwards an affidavit from a Bahamian attorney indicating that share certificate number 7 is a true and correct copy of the original. Counsel furnishes a copy of a resolution dated January 4, 2001 assigning shares number 6 through 5,000 to the beneficiary. Finally, counsel resubmits a copy of a Memorandum of Incorporation for the Bahamian company and a copy of the director's determination.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The first issue to be addressed in this proceeding is whether the petitioner and the foreign entity are qualifying organizations.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

*Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(K) state:

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L) state, in pertinent part:

- Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

It is noted that the record does not contain stock certificate number 3 which was probably issued to Mark Stubbs when the company was formed. Counsel emphasizes that four of the five initial shares of the company were held in trust for the beneficiary. Counsel argues that the new evidence forwarded on appeal showing that the beneficiary owns share number 1 and shares number 6 to 5,000 that he acquired on January 4, 2001, now establishes that he owns essentially 100% of the foreign entity.

Counsel's argument that the new evidence of the transfer of 4,995 shares of the foreign entity to the beneficiary along with his initial share establishes that the beneficiary owns Wambil Enterprises Company Limited located in the Commonwealth of The Bahamas is not persuasive.

The record contains an affidavit provided by the petitioner from Ms. Rosalie V. Hall, "Counsel & Attorney-at-Law" of the Eastern District of the Island of New Providence in the Commonwealth of the Bahamas indicating that she acted for the beneficiary when he incorporated his personal holding

company. Ms. Hall states that Wambil Enterprises Company Limited had an authorized share capital of \$5,000 from its inception and only five shares in the company's capital were issued. Ms. Hall's affidavit was sworn on July 11, 2002 subsequent to January 4, 2001, the date that 4,995 shares were purportedly transferred to the beneficiary. Additionally, the petitioner's balance sheet for the foreign entity for the period ending November 30, 2001 shows that the firm had five shares of stock issued as of that date.

Additionally, the record does not support the petitioner's contention that the United States entity is owned 100% by the beneficiary. The articles of organization for Wambil Enterprises Limited Company in Florida list William C. Bastian and Zonialin B. McGhie as members of the company in the United States

Based on the evidence of record, it is determined that the petitioner has not established that a qualifying relationship exists between the United States firm and a qualifying foreign entity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988).

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.